

REMARKS

Claims 1-49 remain pending in the application. Claims 50-59 are new. Claims 1-6, 8, 10-13, 25, 26, 35, 36, 38, 39, 41 and 43-48 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gavrilovich (USPN 5,729,826). Claims 7, 21, 40 and 42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gavrilovich. Claims 9, 28 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gavrilovich in view of Lanzerotti et al. (US 6,324,398). Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Gavrilovich in view of Urantani (USPN 5,850,593). Claims 20 and 30-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gavrilovich in view of Richetta (USPN 5,499,237). Applicants traverse these rejections and request reconsideration in view of the foregoing amendments and the following remarks.

Claims 15-19, 22-24, 27 and 29 are objected to as being dependent upon a rejected base claim, but are indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. New claims 50-59 correspond, respectively, to claims 15-19, 22-24, 27 and 29 rewritten in independent form or to depend from an allowable independent claim.

Applicants note with appreciation the indication that new drawings are not required in the application.

Applicants note that claim 8 is amended to correct its dependency and claim 40 is amended to correct the reference to its corresponding independent claim.

In response to Applicants June 16, 2003 response, the examiner states with respect to Gavrilovich that if the prior art structure is capable of performing an intended use, then it meets the limitation citing *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The examiner's reliance on *Casey* and *Otto* in this instance is misplaced. *Casey* relates to the issue of a preamble reciting an intended use for a structure,

namely a tape dispensing machine or taping machine, where the claims limitations, those following the preamble, do not patentably distinguish the prior art. Applicants do not disagree that mere recitation in the preamble of an intended use is not sufficient to establish patentability. *Otto* addresses in a claim to a structure whether the material or article worked upon by the structure provides a patentable distinction when the structure is otherwise shown in the prior art. In this instance too, no patentable distinction is made. However, neither of these situations is applicable here. Applicants do not attempt to read into claims to a structure intended use language from the preamble in order to establish patentability. Furthermore, applicants do not propose to distinguish their structural claims based a material or article worked upon by the structure. Finally, applicants, for the reasons set forth below, respectfully traverse the contention that system of Grivilovich is capable to perform the functions described by the limitations of applicants' claims.

It is axiomatic that in order to anticipate a reference must teach, either explicitly or inherently, each and every limitation of the claim. In the case of a claim to a structure, it is sufficient to show that the structure exists in the prior art. With respect to a process or method the reference must teach each and every function or step. In this regard, Gavrilovich fails to teach each and every step or function of the claims.

Applicants do not dispute that the term move means to change posture or position as defined by Merriam-Webster's Collegiate Dictionary. Applicants further do not dispute that in positioning an entity relative to another entity it may be accomplished by moving one or both of the entities. However, merely teaching moving an entity does not explicitly or inherently teach the specific step of positioning the entity at a position relative to the other entity. As applicants stated in their June 16, 2003 response, Gavrilovich in describing a system wherein transceivers move in a fixed path relative to a roadway and responsive to the flow of traffic on the roadway does not teach or suggest positioning of a self-positioning

transceiver system to a position relative to first and second devices that may be mobile or stationary.

As mentioned, the transceivers of Gavrilovich move along a roadway and relative to a flow of traffic, as acknowledged by the examiner, not relative to any particular device or devices. Thus, the transceivers do not move relative to a first device and a second device but instead move relative to a flow of devices. Significantly, Gavrilovich fails entirely to teach moving a transceiver relative to a stationary device. To the contrary, Gavrilovich teaches using fixed transceivers to service stationary or slowly moving devices. Thus, Gavrilovich teaches away from applicants' invention wherein whether the device is stationary or moving, the self-positioning transceiver system positions itself relative to the device to enhance communication quality.

In order to clarify the meaning of position as claimed, applicants have amended claims 1, 25 and 35. More particularly, as the claims are amended it is now clear that the self-positioning transceiver system positions relative to the first and second device regardless of the mobile or stationary nature of the first and second device. Moreover, it is clear that the self-positioning transceiver system may assume a position that is static or dynamic, as may be required to enhance communication quality.

For all of the foregoing reasons, applicants submit claim 1 is allowable over Gavrilovich and such action is solicited. Likewise, claims 2-24 dependent on claim 1 are allowable.

Gavrilovich is similarly deficient in comparison to the limitations of claim 25, as amended, and applicants traverse this rejection and request reconsideration. Therefore, applicants submit claim 25 is allowable and solicits such action. Likewise, claims 26-34 dependent on claim 25, are allowable.

Gavrilovich is also deficient in relation to claim 35, and applicants traverse this rejection and requests reconsideration. Nowhere does Gavrilovich teach causing the moving base stations to move responsive to a quality of a signal received from the device, and especially does not teach the moving base station being statically or dynamically positioned relative to a mobile or stationary device responsive to this signal. For at least these reasons, applicants submit claim 35 is allowable and solicits such action. Likewise, claims 36-49 dependent from claim 35, are allowable.

New claims 50-59 correspond, respectively, to objected to claims 15-19, 22-24, 27 and 29. Applicants submit these claims are allowable.

In view of the foregoing amendments and remarks, the prompt issuance of a notice of allowance is respectfully solicited. The examiner is cordially invited to contact applicants' undersigned attorney with any questions regarding this paper or the application as a whole.

Respectfully submitted,
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